November 7, 2011

To: Honorable Members of the Senate Reforms, Restructuring and Reinventing Committee

As the former Chairperson of the Workers Compensation Board of Magistrates, I had the honor and pleasure of serving on the Board from 2004 to 2009. I am also a former Workers Compensation Appellate Commissioner where I served from 2009 until August 1 of this year. Beginning October 1, 2009, I served as Chairperson of the Appellate Commission until February 1, 2011. Prior to my 7 years of state government service, I practiced law almost exclusively in the field of workers disability compensation for 32 years. In short, I have been actively involved in Michigan's workers disability compensation system for the last 39 years as an advocate and later as an adjudicator and administrator. I believe that my experience gives me a unique perspective on the issues raised by HB 5002, and how this bill would impact all of the stakeholders, including the taxpayers, injured workers, employers, insurance carriers, magistrates, appellate commissioners, and the overall administration of the workers compensation system.

I have had the opportunity to carefully examine HB 5002 as it was originally drafted and in its final form as it was passed by the House last week. I have concluded that this bill will, unfortunately, have a number of unnecessary negative consequences if it were to become law.

Workers Disability Compensation has always been a mostly self-executing system with employers and insurance carriers voluntarily paying wage loss benefits, when appropriate to do so, without the need for the intervention of the contested case hearings and appeals system of the Workers Compensation Agency, Board of Magistrates and Appellate Commission. With HB 5002, claims adjusters would now have no idea whether or not an injured worker had a "wage loss" or the amount of the wage loss, even though the worker is no longer working due to injury. Adjusters and claimants would need the costly services of vocational consultants to determine the workers theoretical or virtual residual wage earning capacity, before benefits would be paid.

Under HB 5002, a stifling burdensome array of determinations would first have to be made by an adjuster as to the injured workers previous qualifications and training; what skills are possessed by the employee; what other jobs might those skills enable the injured worker to perform if s/he were not injured; whether such jobs exist; whether plaintiff is able to perform such jobs with their injury impairments; whether those jobs pay as much as plaintiff earned when injured; and whether the injured employee could

even obtain such a job? If the other "potential" jobs paid less, what do they actually pay? All of these questions would first have to be answered in order to discover an injured workers theoretical wage earning capacity.

This is a costly consequence that will unnecessarily delay the commencement of benefit payments when the injured and disabled worker most needs their wage loss benefits. More likely, benefits will be denied, long delayed, or arbitrarily reduced by the minimum wage, leaving the injured worker no choice but to file a case with the Workers Compensation Agency to obtain a hearing before a Magistrate in order to enforce their rights in the face of their desperate need for wage loss benefits. Instead of having a self-executing voluntary system, most all cases would, unnecessarily, become costly contested cases for the employer, carrier and injured worker, requiring vocational expert assessments by both sides, and the intervention of our contested case hearing system.

Further, I can attest from my experience as Chair of the Board of Magistrates and as Chair of the Appellate Commissioner that the issues of disability and loss of wage earning capacity have seriously bogged down the adjudication system with delays, appeals, and remands for further hearings at significant costs to the parties and the adjudication system. The changes that would be brought by HB 5002 do not simply codify recent Supreme Court decisions. These changes go well beyond any notion of codification, and will only serve to compound the costly delays that we have experienced the past seven years. H.B. 5002 does not stabilize the system. Rather, it will only create another unnecessary years long round of turmoil and costly delay for business and injured workers alike--delays and costs that will be ongoing with HB 5002.

Under HB 5002, the incentive for an employer to bring its employee back to favored work or "reasonable employment" is gone, because the employer will get the same reduction in the benefit rate to be paid by simply deducting the theoretical or virtual wages that might be earned, and will not have to worry about the employee becoming re-injured.

This credit for a theoretical wage earning capacity also undermines the vocational rehabilitation provisions of the Act. There is no incentive for an employer or insurance carrier to engage the injured worker in vocational rehabilitation and job retraining, or assist the disabled worker in job search efforts, if the financial benefits of those efforts can be achieved by simply reducing benefits by the perceived theoretical residual wage earning capacity. This was not the policy, purpose or intent of Michigan's Workers Disability Compensation Act, whose 100th anniversary we celebrate next year.

By statute, process and procedure under our workers compensation hearing system was to be as "summary and reasonable" as possible. MCL 418.853. That statutory mandate will, I fear, become a quaint relic of the past with the changes that will

be brought by HB 5502. The best way to maintain our workers disability compensation program as a self-executing system, that functions in a reasonably summary fashion, is to continue to encourage employers to bring their employees back to work within their medical restrictions, or provide vocational rehabilitation services, so that they can be useful working citizen taxpayers that can support themselves and their families while performing useful service to their employers. The best way to achieve these reasonable and necessary public policy goals is to allow employers a deduction for "actual wages being earned"--not a theoretical or virtual wage earning capacity.

Thank you for your time and consideration.

Respectfully,

Murray A. Gorchow,

Fmr. Chair Workers Compensation Board of Magistrates

Fmr. Chair Workers Compensation Appellate Commission

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p.s., I have taken the liberty of forwarding a copy of this letter to my State Senator, John Pappageorge (Dist. 13); and my State Representative, Marty Knollenberg (Dist 41).